DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 5

FAIR HEARINGS AND
CONTESTED CASE PROCEEDINGS

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Applicable Hearing Procedures

37.5.101 APPLICABLE HEARING PROCEDURES (1) This chapter specifies the fair hearing procedures applicable to department actions in the various programs administered by the department. This chapter does not grant any right to a hearing, but specifies the hearing rules that apply where a right to hearing is otherwise granted by law or rule. (History: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-1-103, 52-2-111, 52-3-406, 53-2-201, 53-2-904, 53-4-202, 53-4-212, 53-4-606, 53-4-1004, 53-6-111, 53-6-113, 53-6-131, 53-6-402, 53-20-305, 53-24-208 and 69-8-412, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 02 reserved

37.5.103 PUBLIC ASSISTANCE, DAYCARE, MEDICAL, LICENSURE AND REFUGEE ASSISTANCE PROGRAMS: APPLICABLE HEARING PROCEDURES

(1) Hearings contesting adverse department actions under the programs specified in (1)(a) through (1)(k) are available to the extent granted in and according to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337, except as otherwise provided by department rule.

(a) aging services;

(b) daycare benefits, except the child and adult food program;

(c) families achieving independence in Montana (FAIM) financial assistance;

(d) food stamps;

(e) foster care maintenance services;

(f) foster care support services;

(g) low income energy assistance program (LIEAP);

(h) low income weatherization program (LIWAP);

(i) medical assistance program (medicaid);

(j) refugee assistance; and

(k) licensure and registration of daycare centers, family daycare homes and group daycare homes under Title 52, chapter 2, part 7, MCA. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 52-1-103, 53-2-201, 53-2-904, 52-3-406, 53-4-212, 53-4-606, 53-6-111, 53-6-113 and 69-8-412, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 04 reserved

37.5.105 NURSING FACILITY RELATED CASES: APPLICABLE HEARING PROCEDURES (1) Hearings contesting a transfer or discharge of a nursing facility resident by a nursing facility are available to the extent granted in 42 CFR part 431, subpart E and shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. A resident shall be considered a claimant for purposes of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(a) Although the department is required by federal law to provide a hearing forum for hearings contesting a transfer or discharge of a nursing facility resident by a nursing facility, the department is not a party to the hearing. The contested action is the action of a nursing facility rather than the department. In such cases, relief may not be granted against the department.

(2) Except as provided in (2)(a), department fair hearings for nursing facilities contesting a department action denying or terminating the facility's medicaid provider agreement or imposing civil monetary penalties or other alternative remedies for noncompliance with the nursing facility participation requirements in 42 CFR part 483 are not available, because a hearing regarding the same action is available from the federal medicare/medicaid agency.

(a) A nursing facility that participates only in the Montana medicaid program, and not in the medicare program, and for whom no federal appeal is available with respect to the same issue is entitled to a hearing before the department to the extent granted in 42 CFR part 431, subpart D, with respect to a department action to deny or terminate participation in medicaid or otherwise sanction the facility for noncompliance with the nursing facility participation requirements in 42 CFR part 483. To the extent a hearing is available under this rule, the hearing shall be conducted in accordance with and subject to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 and 42 CFR part 431, subpart D. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-6-113, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 06 reserved

37.5.107 STATE INSTITUTIONS, ADMISSION, DISCHARGE AND ABILITY TO PAY FOR CARE: APPLICABLE HEARING PROCEDURES

(1) Hearings relating to determinations of ability to pay for cost of care in a state institution are available to the extent granted in 53-1-407, MCA and shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. The resident or financially responsible person shall be considered a claimant for purposes of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(2) Persons contesting denial of admission to or involuntary discharge from a state institution shall have only such rights of appeal or hearing as is specifically granted by statute or department rule, including but not limited to ARM 37.45.501 and 37.66.130. The provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to appeals under ARM 37.45.501 or 37.66.130.

(3) Persons contesting denial of admission to or discharge from the Montana developmental center and the Eastmont human services center shall have such rights of appeal or hearing as provided in ARM 37.5.117. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-1-407, 53-21-402, 53-21-411 and 53-21-413, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 08 reserved

37.5.109 CHEMICAL DEPENDENCY PROGRAM CERTIFICATION: APPLICABLE HEARING PROCEDURES (1) Hearings contesting adverse department actions regarding denial, suspension, revocation, limitation or restriction of approval of chemical dependency treatment programs and chemical dependency education courses are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337. The person or entity aggrieved by the adverse department action shall be considered a provider for purposes of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(2) Hearings contesting denial, suspension, revocation, limitation or restriction of chemical dependency treatment programs under ARM Title 37, chapter 27, subchapter 1 shall be conducted as provided in ARM 37.5.117. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-24-208, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 10 through 12 reserved

37.5.113 MENTAL HEALTH SERVICES PLAN: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the mental health services plan (MHSP), are available to the extent provided in ARM 46.20.123. The procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 apply to such hearings, subject to the provisions of ARM 46.20.123. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-1-601, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 14 reserved

37.5.115 DEVELOPMENTAL DISABILITIES PROGRAMS: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the developmental disability services program are available as follows:

(a) except as otherwise provided by department rule, hearings contesting adverse department actions in the developmental disabilities services program are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(b) hearings contesting a determination by the residential facility screening team that a person is not seriously developmentally disabled and therefore that a commitment or recommitment is not appropriate are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337, subject to the provisions of ARM 37.34.2313;

(c) hearings contesting adverse determinations by the developmental disabilities screening review board are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337, subject to the provisions of ARM 37.34.2313;

(d) hearings contesting adverse department determinations regarding services under the medicaid home and community services program for persons with developmental disabilities are available to the extent provided and according to the procedures specified in ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337, subject to the provisions of ARM 37.34.919;

(e) hearings contesting adverse department actions regarding certification of a person to assist or supervise clients in taking medication are available to the extent provided and according to the procedures specified in ARM 37.34.114, and the provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 and do not apply to such hearings;

(f) hearings contesting adverse actions regarding the individual planning process are available to the extent provided and according to the procedures specified in ARM 37.34.1114 and 37.34.1115, and the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings;

(g) hearings contesting adverse actions regarding the residential facility screening process are available to the extent provided and according to the procedures specified in ARM 37.34.234, and the provisions of 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings; and

(h) hearings contesting adverse department actions regarding aversive procedures approved for habilitation of a person with developmental disabilities are available to the extent provided and according to the procedures specified in ARM 37.34.1426, and the provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-6-101, 53-6-402, 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-133, 53-20-203, 53-20-204, 53-20-205, 53-20-206, 53-20-209 and 53-20-504, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

37.5.116 INTERMEDIATE CARE FACILITY FOR THE DEVELOPMENTALLY DISABLED (ICF/DD): APPLICABLE HEARING PROCEDURES (1) Hearings relating to involuntary transfers and discharge from an intermediate care facility for the developmentally disabled are available, subject to the following extent:

(a) Involuntary transfer or discharge is defined in ARM 37.106.2805.

(b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.

(c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.

(d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325 and 37.5.334 and a resident shall be considered a claimant for purposes of these rules.

(e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.

(f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334. (History: Sec. 50-5-103 and 50-5-238, MCA; IMP, Sec. 53-5-103, 50-5-201 and 50-5-238, MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.)

37.5.117 CERTAIN TITLE 50 PROGRAMS AND OTHER PROGRAMS FOR WHICH NO PROCEDURE IS OTHERWISE SPECIFIED: APPLICABLE HEARING PROCEDURES (1) Hearings under the programs specified in (1)(a) through (1)(u) are available to the extent specifically provided by law, including the Montana Code Annotated and department rules. The provisions of ARM 37.5.311 and 37.5.318 do not apply to such hearings. Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and ARM 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(a) vital statistics under Title 50, chapter 15, MCA;

(b) food establishment licensure and enforcement under Title 50, chapter 50, MCA;

(c) lodging space accommodation establishment licensure and enforcement under Title 50, chapter 51, MCA;

(d) campground and trailer court licensure and enforcement under Title 50, chapter 52, MCA;

(e) laboratory licensure under 50-1-210, MCA;

(f) public swimming pool and bathing place licensure and enforcement under Title 50, chapter 53, MCA;

(g) emergency medical services licensure and enforcement under Title 50, chapter 6, MCA;

(h) designation of health care facilities as trauma facilities under Title 50, chapter 6, part 4, MCA;

(i) health care facility licensure and enforcement under Title 50, chapter 5, MCA;

(j) denial or revocation of a certificate of public advantage under Title 50, chapter 4, part 6, MCA;

(k) enforcement of the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31, MCA;

(l) department findings or determinations of abuse, neglect or misappropriation of resident funds by a nurse aide in a nursing facility under 42 CFR 488.335, subject to the provisions of 42 CFR 488.335;

(m) refusal, revocation or suspension of a certificate of sanitation under ARM Title 37, chapter 112, subchapter 1;

(n) denial of an application for approval of chemical dependency treatment programs under ARM Title 37, chapter 27, subchapter 1;

(o) requests for departmental review of final grievance decisions by contractors under the Children's Health Insurance Plan (CHIP);

(p) denial, suspension, restriction, revocation or reduction to provisional status of a child placing agency license under ARM Title 37, chapter 93, subchapter 2;

(q) denial, suspension, revocation or non-renewal of a youth foster care license or youth care facility license under ARM Title 37, chapter 97, subchapter 1;

(r) denial of a license for a community home for persons with developmental disabilities under ARM Title 37, chapter 100, subchapters 3 and 4;

(s) assessment of a tobacco education fee against an employee or owner of an establishment under 16-11-308, MCA;

(t) denial or other determinations of the amount, duration or continuation of an adoption subsidy under ARM Title 37, chapter 52, subchapter 2; and

(u) any department program with respect to which a right to hearing is specifically granted by law, including department rule, but for which a hearing process is not otherwise provided by department rule. (History: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-2-111, 53-2-201, 53-4-1004, 53-6-111, 53-6-113, 53-6-402, 53-20-305 and 53-24-208, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

37.5.118 SUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT: APPLICABLE HEARING PROCEDURES (1) Hearings contesting substantiated reports of child abuse, neglect or exploitation are available to the extent provided in ARM 37.47.610. The procedures specified in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.334 and 37.5.337 apply to such hearings, subject to the limitations specified in ARM 37.47.615. (History: Sec. 2-4-201 and 41-3-208, MCA; IMP, Sec. 2-4-201, 2-4-612 and 41-3-202, MCA; NEW, 2004 MAR p. 2409, Eff. 10/8/04.)

37.5.119 HEALTH CARE FACILITY CERTIFICATE OF NEED: APPLICABLE HEARING PROCEDURES (1) Hearings relating to a health care facility certificate of need are available to the extent granted and as provided in 50-5-306, MCA, ARM 37.106.115 and 37.106.120. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings.

(2) Hearings relating to a health care facility certificate of need will be conducted in person in Helena, Lewis and Clark County, Montana, at a location designated by the department, unless the parties mutually agree to conduct the hearing telephonically. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 50-5-306, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 20 reserved

37.5.121 WOMEN, INFANTS, CHILDREN (WIC) PROGRAM: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the women, infants, children (WIC) program are available to the extent provided in and according to the procedures specified in ARM Title 37, chapter 59. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings. (History: Sec. 50-1-202 and 53-2-201, MCA; IMP, Sec. 50-1-202, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 22 reserved

37.5.123 CHILD AND ADULT CARE FOOD PROGRAM (CACFP): APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR INSTITUTIONS, RESPONSIBLE PRINCIPALS AND RESPONSIBLE INDIVIDUALS

(1) Administrative reviews (appeals) are available to the extent granted in 7 CFR 226.6. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334 and 37.5.337 do not apply to such administrative reviews.

(2) An administrative review of adverse actions will be limited to a review of the written information, federal policies, 7 CFR 226, state laws, and administrative rules, policies and procedures governing the program unless the affected institution or its responsible principals or individuals request a hearing in addition to, or in lieu of, a review of written information.

(3) A notice of action from the department to the institution and responsible principals and individuals will be issued as required by 7 CFR 226.6(k). The notice of action required by 7 CFR 226.6(k) must state that in the event the institution or responsible principals and individuals choose an administrative review of an action, a hearing will be held by the review official in addition to, or in lieu of, a review of written information, only if the institution or the responsible principals or individuals so requests in the letter requesting an administrative review.

(4) An administrative review will be conducted in person in Helena, Lewis and Clark County, Montana, at a location designated by the office of fair hearings, unless the parties mutually agree to conduct the administrative review telephonically.

(5) The written request for an administrative review must be received by the office of fair hearings within 15 calendar days of the date of receipt of the notice of action by the institution or, in the event of a serious deficiency, the date of receipt by the responsible principals and individuals. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2004 MAR p. 577, Eff. 3/12/04.)

37.5.124 CHILD AND ADULT CARE FOOD PROGRAM (CACFP): APPLICABLE ADMINISTRATIVE REVIEW (APPEAL) PROCEDURES FOR DAY CARE HOMES (1) Administrative reviews (appeals) are available to the extent granted in 7 CFR 226.6(l). The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.331, 37.5.334 and 37.5.337 do not apply to such administrative reviews.

(2) An administrative review of an intent to terminate a day care home provider's agreement for cause or a suspension of their participation will be limited to a review of the written documentation provided to the office of fair hearings, federal policies, 7 CFR 226, state laws and administrative rules, the requirements shown in the sponsor/provider agreement, and policies and procedures governing the child and adult care food program. This review will be performed by allowing the parties to submit written documentation to support their claim.

(3) A day care home provider must request an administrative review in writing. The written request must be received by the office of fair hearings at the Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 within 15 calendar days of receipt by the day care home provider of the notice of intent to terminate or notice of suspension. The written request for administrative review must include the date the notice of intent to terminate or notice of suspension was received by the day care home provider.

(4) The day care home provider may refute the findings contained in the notice of intent to terminate or notice of suspension by submitting written documentation to the administrative review officials at the office of fair hearings. The sponsor and provider must submit copies of the documentation in written format to the office of fair hearings.

(5) In order for documentation to be considered, the day care home provider must submit written documentation to the administrative review official at the office of fair hearings no later than 30 calendar days after receipt by the day care home provider of the notice of intent to terminate or notice of suspension. The sponsoring organization must submit written documentation to the administrative review official at the office of fair hearings no later than 15 calendar days after the date the sponsor receives from the office of fair hearings the acknowledgment of the hearing request referred to in (6)(a).

(6) When a request for an administrative review from a day care home provider is received by the office of fair hearings, the office of fair hearings will:

(a) acknowledge receipt by notifying the department, the sponsor and the day care home provider of the request for administrative review within five calendar days and include the final date for rendering a decision;

(b) consider only written documentation submitted by the sponsoring organization and the day care home (or their authorized representatives). Day care home providers and sponsors will not be contacted for additional information. The decision will be based entirely upon the written documentation provided to the office of fair hearings within the time limits cited in (5), and on federal and state laws, 7 CFR 226, rules, regulations, the requirements stated in the sponsor/provider agreement, and policies and procedures governing the program; and

(c) render a final decision within 60 calendar days of receipt of the written request for an administrative review from the day care home provider. This time limit is a federal administrative requirement for the department and may not be used as a basis for overturning the department's action if a decision is not made within the specified time limit.

(7) The determination made by the administrative review official is the final administrative determination to be afforded the day care home.

(8) Documentation may be submitted to the office of fair hearings only once. The first submission of documentation is the only written documentation from the provider and sponsor that may be reviewed by the hearing officer. No other submitted written documentation will be considered. (History: Sec. 50-1-202, MCA; IMP, Sec. 50-1-202, MCA; NEW, 2004 MAR p. 577, Eff. 3/12/04.)

37.5.125 VOCATIONAL REHABILITATION AND BLIND AND LOW VISION SERVICES PROGRAMS: APPLICABLE HEARING PROCEDURES

(1) Hearings relating to the provision of vocational rehabilitation services inclusive of the blind and low vision services program are available to the extent granted and as provided in ARM 37.30.1401. The provisions of ARM 37.5.307, 37.5.310, 37.5.311, 37.5.316, 37.5.328 and 37.5.331 do not apply to such hearings. (History: Sec. 53-2-201, 53-6-113, 53-7-102, 53-7-206 and 53-7-315, MCA; IMP, Sec. 53-7-102, 53-7-106, 53-7-206, 53-7-314, 53-7-315 and 53-19-112, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2002 MAR p. 3628, Eff. 12/27/02.)

Rule 26 reserved

37.5.127 TELECOMMUNICATIONS ACCESS PROGRAM: APPLICABLE HEARING PROCEDURES (1) Hearings relating to the telecommunications access program are available to the extent granted and as provided in ARM 37.36.901 and 37.36.902. The provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 do not apply to such hearings. (History: Sec. 53-2-201 and 53-6-113, MCA; IMP, Sec. 53-19-305, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 28 reserved

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37.5.129 CHILD SUPPORT ENFORCEMENT: APPLICABLE HEARING PROCEDURES (1) Hearings relating to child support enforcement matters are available to the extent granted and as provided in ARM Title 46, chapter 30, subchapter 6. Unless specifically referenced in that subchapter, the provisions of any other rule do not apply to such hearings. (History: Sec. 53-2-201, MCA; IMP, Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 30 reserved

37.5.131 DEPARTMENT HEARING PROCEDURES, SCOPE AND SUBORDINATION TO CERTAIN OTHER LAW (1) There is no right to a hearing in any matter except as specifically provided by law, including department rule.

(2) There is no right to a hearing in a contract dispute between the department and any other person or entity except as specifically provided by the terms of the contract or as specifically provided by state law.

(3) The rules in this chapter are subject to the provisions of any applicable federal statute or regulation, whether now in existence or hereafter adopted.

(4) The rules in this chapter are subject to any other provision of Montana statute or department rule applicable to the particular program or matter at issue. (History: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-1-103, 52-2-111, 53-2-201, 53-2-904, 53-3-406, 53-4-202, 53-4-212, 53-4-606, 53-4-1004, 53-6-111, 53-6-113, 53-6-131, 53-6-402, 53-20-305, 53-24-208 and 69-8-412, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Subchapter 2 reserved

Subchapter 3

Formal and Informal Hearing and Appeal Procedures

37.5.301 APPLICABILITY (1) This rule and ARM 37.5.304, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 apply only to hearings in the program areas specified in ARM 37.5.101, 37.5.103, 37.5.105, 37.5.107, 37.5.109, 37.5.113, 37.5.115, 37.5.117, 37.5.119, 37.5.121, 37.5.123, 37.5.125, 37.5.127, 37.5.129, 37.5.131 and 37.5.301, and shall not be construed to grant a right to hearing in any other matter.

(2) The provisions of this rule, ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337 are subject to the provisions of ARM 37.5.101, 37.5.103, 37.5.105, 37.5.107, 37.5.109, 37.5.113, 37.5.115, 37.5.117, 37.5.119, 37.5.121, 37.5.123, 37.5.125, 37.5.127, 37.5.129 and 37.5.131.

(3) Where a right to a hearing is granted in ARM 37.5.103, 37.5.105, 37.5.107, 37.5.109, 37.5.113, 37.5.115, 37.5.117, 37.5.119, 37.5.121, 37.5.123, 37.5.125, 37.5.127 and 37.5.129 or any other rule of the department, the right to hearing is not absolute but is subject to all applicable provisions of these rules and other applicable law. (History: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-1-103, 52-2-111, 53-2-201, 53-2-904, 52-3-406, 53-4-202, 53-4-212, 53-4-606, 53-4-1004, 53-6-111, 53-6-113, 53-6-131, 53-6-402, 53-20-305, 53-24-208 and 69-8-412, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 02 and 03 reserved

37.5.304 DEFINITIONS For purposes of this subchapter, unless the context requires otherwise, the following definitions apply:

(1) "Adverse action" means:

(a) a failure of the department to provide a claimant an opportunity to make application or reapplication for benefits;

(b) a failure of the department to act with reasonable promptness on a claimant's application for benefits;

(c) an action by the department denying, suspending, reducing or terminating benefits of a claimant, or an action by the department demanding repayment of or to recover an overpayment of benefits to a claimant;

(d) an action by the department establishing conditions on the manner or form of benefits, including restrictive benefits or protective payments, or establishing conditions for the receipt of benefits, including a work requirement;

(e) an action by the department to deny, terminate or fail to renew certification or a provider agreement for the medicaid program to any nursing facility or intermediate care facility for the mentally retarded;

(f) an action by the department to deny, suspend, reduce, revoke or terminate licensure, registration, certification or enrollment of a provider or to fail to renew certification, enrollment, licensure or the registration certificate of a provider who has applied for renewal;

(g) an action by the department establishing the rate of reimbursement for a provider or denying in whole or in part a provider's claim for services or items;

(h) an action by the department demanding repayment of or to recover an overpayment made to a provider, or to impose a penalty or sanction against a medical assistance provider under ARM Title 37, chapter 85, subchapter 5;

(i) a department determination of ability to pay for the cost of care in an institution under 53-1-405, MCA;

(j) a department determination that a medicaid applicant or recipient is permanently institutionalized;

(k) a determination that the department intends to impose a lien upon the applicant's or recipient's real property pursuant to 53-6-171, MCA;

(l) an action by the department denying or reducing a provider's quality incentive adjustment as provided in ARM 37.80.205;

(m) an action by the department denying or reducing a special needs adjustment as provided in ARM 37.80.205; or

(n) a department's substantiation determination of a report of child abuse, neglect or exploitation under ARM Title 37, chapter 47, subchapter 6.

(2) "Authorized representative" means legal counsel, relative, friend or other spokesman specifically authorized by the claimant in writing or by law to represent the claimant in matters pertaining to the receipt of benefits from this department.

(3) "Benefit" means any form of assistance provided by or through the department to an eligible recipient under the department's administrative rules.

(4) "Board" means the board of public assistance provided for in 2-15-2203, MCA.

(5) "Claimant" means:

(a) an applicant for or recipient of benefits from the department whether an individual or household and includes the claimant's authorized representative;

(b) a resident or financially responsible person as defined in 53-1-401, MCA;

(c) a medical assistance provider appealing an eligibility determination as a real party in interest;

(d) a subject of a substantiated report of child abuse or neglect; or

(e) any other person or entity as provided by department rule.

(6) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(7) "He" and other words used in the masculine gender include the feminine and the neuter.

(8) "Hearing officer" means an individual hired or appointed by the department to conduct a hearing under the authority of the Montana Administrative Procedure Act and the department's rules.

(9) "Local office" means a county department, a regional office, a bureau if there is no regional office, or a division if there is neither a regional office nor a bureau.

(10) "Local supervisor" means a county director or his designee, a regional supervisor, a bureau chief if there is no regional supervisor, or a division administrator if there is neither a regional supervisor nor bureau chief.

(11) "Medical assistance provider" means any individual or organization providing services to eligible claimants under the Montana medicaid program established under Title 53, chapter 6, MCA.

(12) "Provider" means an individual or organization licensed, enrolled or registered by the department or authorized by the department to provide services to a person eligible for benefits, except the term does not include contractors. For purposes of this subchapter, "provider" includes:

(a) any individual or organization seeking to obtain or retain any license, enrollment or certification required to provide services to eligible persons or the general public;

(b) a medical assistance provider;

(c) any individual or organization that is not a claimant; or

(d) any other person or entity as provided by department rule. (History: Sec. 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-3-107, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA; IMP, Sec. 2-4-201, 41-3-202, 41-3-208, 41-3-1103, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; AMD, 1985 MAR p. 943, Eff. 7/12/85; AMD, 1992 MAR p. 1496, Eff. 7/17/92; AMD, 1993 MAR p. 3069, Eff. 1/1/94; AMD, 1994 MAR p. 1744, Eff. 7/1/94; AMD, 1997 MAR p. 548, Eff. 3/25/97; AMD, 1999 MAR p. 1301, Eff. 7/1/99; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2004 MAR p. 2409, Eff. 10/8/04.)

37.5.305 APPLICABILITY OF NOTICE REQUIREMENTS (1) This rule, ARM 37.5.503 and 37.5.505 apply only to claimants under the following programs:

(a) developmental disabilities program;

(b) families achieving independence in Montana (FAIM) financial assistance;

(c) food stamps;

(d) medical assistance program (medicaid);

(e) low income energy assistance program (LIEAP);

(f) low income weatherization program (LIWAP);

(g) mental health managed care services;

(h) refugee assistance;

(i) daycare benefits, except child and adult food care;

(j) foster care maintenance services;

(k) foster care support services; and

(l) any other program as provided by department rule. (History: Sec. 50-1-202, 53-2-201 and 53-6-113, MCA; IMP, Sec. 41-3-1103, 50-1-202, 52-1-103, 53-2-201, 53-2-904, 53-4-202, 53-4-606, 53-6-111, 53-6-113, 53-6-131, 53-20-305 and 69-8-412, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 06 reserved

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) A request for a hearing is any clear written expression by the claimant or an authorized representative to contest an adverse action, except that a request for hearing concerning food stamp benefits may be oral.

(b) The freedom to request a hearing shall not be interfered with in any way. The local office of public assistance or child care resource and referral agency shall assist a claimant who seeks help in requesting a hearing.

(c) A request for a hearing by a claimant must be received by the department within 90 days after the date of mailing of notice of the adverse action, except as otherwise provided in these rules.

(i) A hearing request from a claimant must be received in writing within 30 days of the date of mailing of notice of the adverse action regarding:

(A) a department determination of ability to pay for the cost of care in an institution under 53-1-405, MCA;

(B) a nursing facility's transfer or discharge of a nursing facility resident; or

(C) a substantiated report of child abuse, neglect or exploitation;

(ii) Hearing requests must be mailed or delivered to the department's Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953, except hearing requests to contest a substantiated report of child abuse, neglect or exploitation must be mailed or delivered to the Division Administrator, Department of Public Health and Human Services, Child and Family Services Division, 1400 Broadway, P.O. Box 8005, Helena, MT 59604-8005.

(d) Cases in which the sole issue is one of state or federal policy may be consolidated for a single group hearing. Each claimant shall be permitted to present his own case.

(2) A provider other than a medical assistance provider who is aggrieved by an adverse action of the department shall be granted the right to hearing as provided in this chapter, except as otherwise provided in other department rules.

(a) Except as provided in (2)(b), request for a hearing from a provider must be received by the department in writing within 30 days after the date of mailing of notice of the department's adverse action.

(b) A request for a hearing from a day care facility applicant, licensee, registrant or legally unregistered provider must be received by the department in writing within 10 days after the date of mailing of notice of the department's adverse action denying, suspending, cancelling, reducing, modifying or revoking a legally unregistered provider payment number or a day care license or registration certificate.

(3) Medical assistance providers aggrieved by adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, shall be granted the right to a hearing as provided in ARM 37.5.310.

(a) A medical assistance provider appealing a recipient eligibility determination as a real party in interest is entitled to a hearing according to the procedures and subject to the requirements applicable to claimants except as provided in (3)(b).

(b) It is the provider's responsibility to verify that medicaid eligibility has been established. If a medical assistance provider receives information from the department indicating that a recipient has not or may not have been determined eligible for medicaid, as, for example, in an explanation of benefits code on a statement of remittance, the provider must take appropriate action to verify or establish eligibility. A hearing request by the medical assistance provider as a real party in interest regarding the recipient's medicaid eligibility will not be considered timely if received by the department more than 90 days after the earlier of:

(i) receipt of the information indicating that the recipient has not or may not have been determined medicaid eligible; or

(ii) adequate notice to the claimant of the adverse action.

(c) A medical assistance provider is not entitled to notice from the department of an adverse action regarding a claimant's eligibility for medical assistance, except that:

(i) if the medical assistance provider has submitted to the county office making the eligibility determination a written request for notice of a determination on a pending application for medical assistance, the county office must mail to the provider a copy of the same notice provided to the claimant; and

(ii) if the medical assistance provider has submitted to the county office responsible to monitor and administer a recipient's ongoing eligibility a written request for notice of termination of eligibility for medical assistance, the county office must mail to the provider a copy of any notice of termination provided to the claimant.

(4) There is no opportunity for hearing under this chapter on departmental activities that are not defined as an adverse action in ARM 37.5.304, unless a right to hearing under this chapter is specifically granted by other department rule. A dispute regarding a contract between the department and a provider or other person or entity is not an adverse action by the department and there is no opportunity for fair hearing concerning such disputes. (History: Sec. 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA; IMP, Sec. 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; AMD, 1985 MAR p. 943, Eff. 7/12/85; AMD, 1992 MAR p. 1496, Eff. 7/17/92; AMD, 1993 MAR p. 3069, Eff. 1/1/94; AMD, 1994 MAR p. 1744, Eff. 7/1/94; AMD, 1997 MAR p. 548, Eff. 3/25/97; AMD, 1999 MAR p. 1301, Eff. 7/1/99; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2001 MAR p. 1107, Eff. 6/22/01; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2004 MAR p. 2409, Eff. 10/8/04.)

Rules 08 and 09 reserved

NEXT PAGE IS 37-855

37.5.310 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCESS FOR MEDICAL ASSISTANCE PROVIDERS (1) The following administrative review and fair hearing process applies to all medical assistance providers that are aggrieved by an adverse action of the department, except medical assistance providers appealing eligibility determinations as a real party in interest.

(2) A medical assistance provider, other than a medical assistance provider appealing an eligibility determination as a real party in interest, aggrieved by an adverse action of the department may request an administrative review. The request must be in writing, must state in detail the provider's objections, and must include any substantiating documents and information which the provider wishes the department to consider in the administrative review. The request must be mailed or delivered to the Department of Public Health and Human Services, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and should be addressed or directed to the division of the department that issued the contested determination. The request for administrative review must be received by the department within 30 days of mailing of the department's written determination.

(a) Within the 30 days a provider may request in writing an extension of up to 15 days for submission of a request for administrative review. The department may grant further extensions for good cause shown. Requests for further extensions must be in writing, must be received by the department within the period of any previous extension, and must demonstrate good cause for the extension.

(b) The provider may also request a conference as part of the administrative review. If the provider requests an administrative review conference, the conference must be held at a time scheduled by the department as provided in ARM 37.5.318(3) through (3)(c)(ii). If a provider requests a conference as part of the administrative review, any substantiating materials the provider wishes the department to consider as part of the review may be submitted no later than the time of the conference. The conference may be conducted by the department or its designee and shall be based on the department's records and determination and the provider's written objections and substantiating materials, if any.

(c) No later than 60 days following receipt of the written objections and substantiating materials, if any, or the conference, whichever is later, the department must mail a written determination concerning the provider's objections and substantiating materials and the position the department takes concerning the determination.

(d) A provider must exhaust in a timely manner the administrative review process provided in this rule before requesting a fair hearing. A provider that has not exhausted the administrative review process, including a provider that fails to timely request an administrative review, is not entitled to a fair hearing before the department or the board.

(3) In the event the provider is aggrieved by an adverse department administrative review determination, the following fair hearing procedures will apply. In addition to the authority granted in ARM 37.5.313, the hearings officer may dismiss a fair hearing request if a provider fails to meet any of the requirements of (3)(a) through (3)(e).

(a) The written request for a fair hearing must be mailed or delivered to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953.

(b) The request must be signed by the provider or his designee.

(c) The fair hearing request must be received not later than the 30th calendar day following the date of mailing of the department's written administrative review determination.

(d) The fair hearing request must contain a short and plain statement of each reason the provider contends the department's administrative review determination fails to comply with applicable law, regulations, rules or policies.

(e) The provider must serve a copy of the hearing request upon the department's division that issued the contested determination within 3 working days of filing the request. Service by mail is permitted.

(f) The hearings officer will conduct the fair hearing in accordance with the applicable provisions of this subchapter at Helena, Montana. The hearing shall be in person except that the hearing may be conducted by telephone as mutually agreed by the parties.

(g) The hearings officer will render a written proposed decision within 90 calendar days of final submission of the matter to him.

(4) In the event the provider or department is aggrieved by a hearings officer's proposed decision, the provider or department may request review by the board of public assistance as provided in ARM 37.5.331.

(5) The provisions of this rule apply in addition to the other applicable provisions of this subchapter, except that the provisions of this rule shall control in the event of a conflict with the other provisions of this subchapter. (History: Sec. 2-4-201 and 53-6-113, MCA; IMP, Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-111, 53-6-113 and 53-6-141, MCA; NEW, 1992 MAR p. 1496, Eff. 7/17/92; AMD, 1993 MAR p. 3069, Eff. 1/1/94; AMD, 1994 MAR p. 1744, Eff. 7/1/94; AMD, 1997 MAR p. 548, Eff. 3/25/97; AMD, 1999 MAR p. 1301, Eff. 7/1/99; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

37.5.311 INFORMAL RECONSIDERATION (1) A provider or other person may request an informal reconsideration of a department action in the following cases:

(a) where the hearing is to be held after the effective date of a denial, termination, or non-renewal of enrollment, certification or registration;

(b) where the department intends to withhold or suspend payments to a medical assistance provider pursuant to ARM 37.85.513; or

(c) as otherwise provided by department rule.

(2) The informal reconsideration includes:

(a) written notice to the provider of the department action and the findings upon which it was based, if not otherwise already provided;

(b) the provider's written refutation of the department's findings, which must be received by the department within 15 days after mailing of the department's notice under (2)(a); and

(c) the department's written determination modifying, affirming or reversing its decision.

(3) This rule does not require that the informal reconsideration or any hearing be conducted prior to the department action.

(4) An informal reconsideration under this rule is not subject to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(5) An informal reconsideration is a different and separate form of procedure from an administrative review and/or fair hearing. A provider or other person is not entitled to an administrative review, fair hearing or other process in addition to an informal reconsideration unless specifically provided by department rule or otherwise required by law. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 12 reserved

37.5.313 DISMISSAL OF HEARING (1) A hearing may be dismissed when:

(a) the request for a hearing is withdrawn by the claimant or provider or his representative:

(i) except as provided in (1)(a)(ii), the request for hearing must be withdrawn in writing;

(ii) a request for hearing contesting an adverse department action under the food stamp program or the families achieving independence in Montana (FAIM) financial assistance program may be withdrawn by oral request of the claimant;

(iii) within 10 days of an oral request under (1)(a)(ii) the hearing officer must provide a written notice to the claimant confirming the withdrawal request and providing the claimant with an opportunity to reinstate the hearing request as provided in (1)(a)(iv);

(iv) a hearing request that was orally withdrawn under (1)(a)(ii) may be reinstated if the claimant notifies the office of fair hearings within 10 days of receiving the confirmation of dismissal under (1)(a)(iii);

(v) if a hearing request is reinstated under (1)(a)(iv), the hearing must be completed within the time frames required by federal law;

(b) the claimant or provider or his representative without good cause fails to appear at the hearing;

(c) the request is not received within the specified time;

(d) either federal or state law requires automatic benefit changes for a class of claimants unless the issue is incorrect benefit adjustments;

(e) the department does not have jurisdiction over the subject matter or the appeal procedure;

(f) the contested action is not an adverse action;

(g) the contested action is not an action of the department, but rather an action of a provider or other person or entity, unless department rule specifically grants a right to hearing with respect to actions by the person or entity;

(h) the claimant or provider is not aggrieved by the contested adverse action;

(i) the hearing request, considered together with other documentation in the record, demonstrates that the only issue is one of constitutionality or other issue beyond the hearing officer's power or jurisdiction; or

(j) the provisions of any other department rule so provides.

(2) A pending hearing may be dismissed when the claimant or provider or his representative fails to respond to or comply with a request or order from the hearing officer, including but not limited to a request or order to inform the hearing officer whether the party wishes to proceed further with the fair hearing case, if the party has been warned that failure to respond or comply will result in dismissal. A hearing dismissed under this subsection may be reinstated by the hearing officer only if the claimant, provider or his representative demonstrates good cause for the failure to respond or comply upon which dismissal was based.

(3) The list of grounds for dismissal in this rule is not exclusive. Unless inconsistent with particular rules in this chapter or other applicable law, dismissal may be granted based upon other principles of general law. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2001 MAR p. 1107, Eff. 6/22/01.)

Rules 14 and 15 reserved

37.5.316 CONTINUATION OF PUBLIC ASSISTANCE BENEFITS

(1) This rule regarding continuation of benefits applies only to benefits under the following programs:

(a) TANF cash assistance;

(b) food stamps; and

(c) medicaid, subject to (2).

(2) For purposes of this rule, benefits include services being received under the medicaid home and community-based services program for persons who are elderly or who have a disability, or developmental disability services funded under the medicaid program. Applicants for such services who are aggrieved by a department determination are not entitled to medicaid home and community-based services under this rule.

(3) If a claimant requests a hearing within the period between the date of the notice and the date of the adverse action and the claimant is receiving benefits at that time, at the request of the claimant benefits shall be continued until the earlier of the expiration of the current eligibility or authorization period or issuance of a hearing decision except as provided in (7) and (8) of this rule.

(4) If the claimant establishes that his failure to request a hearing within the notice period was for good cause the department shall at the request of the claimant, reinstate the benefits to their prior level until the earlier of the expiration of the current eligibility or authorization period or issuance of a hearing decision, except as provided in (6) and (7) of this rule.

(5) If an action is taken without timely notice and the claimant requests a hearing within 10 days of the mailing of the notice of the action, at the request of the claimant benefits shall be reinstated and continued until the earlier of the expiration of the current eligibility or authorization period or issuance of a hearing decision if the case is one in which the applicant is entitled to a hearing and the hearing is not subject to dismissal under ARM 37.5.313.

(6) A claimant is not entitled to continued benefits if, after a hearing, the hearing officer makes a determination in writing that the sole issue is one of state or federal law or policy and no valid issue of improper benefit calculation, or misapplication or misinterpretation of state or federal law or policy exists.

(7) Except as provided in (6), once continued or reinstated, benefits may not be reduced or terminated prior to a hearing decision unless:

(a) the eligibility, or authorization period expires, although the claimant may reapply and may be determined eligible for benefits;

(b) a subsequent change affecting claimant's benefits occurs while the hearing is pending and a subsequent hearing is not requested after notice of adverse action resulting from the subsequent change; or

(c) a mass change affecting claimant's eligibility or benefit level occurs while the hearing decision is pending.

(8) If a claimant requests a hearing on an adverse action concerning food stamp benefits and does not positively indicate whether continued benefits are requested, the department shall assume that continuation of benefits is desired and the benefits shall be issued on the same basis as authorized immediately prior to the notice of adverse action. If a recipient specifically waives continuation of food stamp benefits, the department shall terminate benefits pending a hearing decision in the contested case. This subsection applies only to food stamp benefits, and not to benefits of any other kind.

(9) Regardless of any other provision of this rule, a claimant is not entitled to continuation of benefits unless the decision at issue is a recission by the department of a specific eligibility or authorization period previously granted by the department, such as eligibility for a specified time period or authorization for a particular service or quantity of services. A claimant is not entitled to a continuation of benefits where the department granted the benefit for a particular period of time or in a particular quantity and the contested action is the department's denial of an additional grant of benefits for an additional period of time or quantity of services.

(10) A claimant is not entitled to continuation of benefits when the issue is the lack of a negotiated FIA as specified at ARM 37.78.216(2).

(11) A claimant is not entitled to continuation of benefits for any month that TANF cash assistance benefits have been issued for a required filing unit member in another case or state.

(12) A claimant is not entitled to continuation of benefits if the department demonstrates at the hearing that continuation of benefits would pose a risk of harm to the claimant or another person.

(13) Benefits paid to a claimant pending a hearing decision are subject to recovery by the department if the adverse action is sustained.

(14) This rule shall not be construed to provide continuation of benefits with respect to an action taken by a provider rather than the department.

(15) This rule shall not be construed to prevent or delay a department action against a provider. If an adverse action is taken against a provider, payments may be withheld pending the final hearing decision. (History: Sec. 52-2-111, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-6-111, 53-6-113 and 53-7-102, MCA; IMP, Sec. 52-2-112, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112 and 53-6-111, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2002 MAR p. 2921, Eff. 10/18/02.)

Rule 17 reserved

37.5.318 ADMINISTRATIVE REVIEW (1) Upon the request for a hearing by a claimant or a provider, other than a medical assistance provider, the department shall conduct an administrative review with the purpose of resolving the case and avoiding an unnecessary hearing. This review may be conducted in person or by telephone. In person reviews shall be conducted at a place designated by the reviewer and reasonably convenient to the claimant or as designated by the hearing officer.

(a) No administrative review is required by this rule:

(i) if the department provides by other rule for an administrative review or other substantially equivalent process prior to a hearing request. If the department provides by rule for such a process, a hearing may not be granted unless the claimant or provider has exhausted the process in a timely manner; or

(ii) in any of the following matters:

(A) hearings pursuant to ARM 37.5.105 contesting a transfer or discharge of a nursing facility resident by a nursing facility;

(B) hearings pursuant to the Youth Access to Tobacco Act, Title 16, chapter 11, part 3, MCA;

(C) as otherwise provided by department rule.

(2) An administrative review includes:

(a) an informal conference with the department, subject to (3); and

(b) a review of relevant facts, legal authority and circumstances involved in the adverse action by the department and the preparation of an administrative review report for submission to the hearing officer within 20 days from the date the request for administrative review is mailed from the hearing officer to the person responsible for conducting the review, or within such other longer period specified by the hearing officer or agreed upon by the parties.

(3) The department official designated to conduct the administrative review may schedule the administrative review conference and must notify the claimant or provider of the date, time and place of the conference. If the claimant or provider cannot appear at the date and time set for the conference, the claimant or provider shall be given a reasonable opportunity to reschedule the conference. An additional opportunity or opportunities to reschedule may be granted for good cause shown.

(a) The conference shall be conducted at the office of the department official designated to conduct the administrative review, or may be conducted telephonically.

(b) The notification of the date, time and place may inform the claimant or provider that if the claimant or provider fails to appear at the date, time and place scheduled or fails to cooperate reasonably in scheduling and completing the conference, the conference will not be rescheduled and the administrative review report will be completed without a conference.

(c) The official designated to conduct the administrative review may proceed to conduct and complete the administrative review report without a conference if:

(i) the notification permitted by (3)(b) has been provided and the claimant or provider does not appear at the conference at the time scheduled and the conference has not been rescheduled; or

(ii) the claimant or provider does not cooperate reasonably in scheduling and completing the conference.

(4) An adverse action may be reversed or modified by the department or its designee at any time before, during or after the administrative review, in which case a hearing will not be held unless the claimant or provider is aggrieved by the modified adverse action and requests that the hearing be held.

(a) If the adverse action is modified or reversed by the department and the benefits which are the subject of the adverse action include county funds, a county human services or welfare office may request the hearing officer to hold the hearing if it is aggrieved by the action of the division administrator. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1985 MAR p. 943, Eff. 7/12/85; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 19 through 21 reserved

37.5.322 HEARING OFFICER, POWERS AND DUTIES (1) A hearing shall be conducted by an impartial individual appointed or hired by the department as hearing officer who has had no direct involvement in the initial determination of the adverse action.

(2) The hearing officer may:

(a) require the furnishing of such information, the attendance of witnesses, depositions upon oral examination or written questions, written interrogatories, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for purposes of the hearing. For this purpose, the hearing officer may, and upon request of any party to a hearing, shall issue subpoenas for witnesses or subpoenas duces tecum;

(b) except in a hearing to which the department is not a party, order the department or, where appropriate, the local office to pay witness fees, mileage and other actual and necessary expenses as provided under the Rules of Civil Procedure for district courts of the state of Montana of a witness subpoenaed at the request of a claimant if, in the judgement of the hearing officer, the testimony of that witness is essential to the claimant's case;

(c) disqualify himself at any time on the filing of a timely and sufficient affidavit of personal bias or other disqualification;

(d) direct the parties to appear and confer in a pre-hearing conference to consider definition and simplification of the issues or other matters to aid in the orderly and efficient conduct of the hearing;

(e) allow, for good cause shown, a third party to represent a claimant as an authorized representative in those instances where written authorization of the claimant is not obtainable;

(f) grant a continuance at the request of a party for good cause shown or with the consent of all parties;

(g) take judicial notice of state and federal laws and regulations and facts within the general knowledge of the public;

(h) grant summary judgment according to the provisions of Rule 56, Montana Rules of Civil Procedure; and

(i) require a party to comply with reasonable and appropriate orders or requests not in conflict with these rules and necessary to assure the orderly conduct of pre-hearing and hearing procedures or to avoid unnecessary proceedings or expense.

(3) A hearing officer shall:

(a) administer oaths and affirmations:

(b) ensure that all relevant issues are considered;

(c) request, receive and make part of the record all evidence determined necessary to decide the relevant issues;

(d) regulate the conduct of the hearing consistent with due process to ensure an orderly hearing;

(e) prepare a proposal for decision consisting of proposed findings of fact, conclusions of law and a recommended order deciding the case based on the evidence and the testimony contained in the hearing record.

(4) In provider hearings, if a motion is filed, or as otherwise ordered by the hearing officer in a particular claimant hearing, the following rules apply to motions:

(a) Upon filing of a motion or within 5 days thereafter, the moving party must state the reasons. The statement may be accompanied by appropriate supporting documents. Within 10 days thereafter, the adverse party must file an answer statement which also may be accompanied by appropriate supporting documents. Within 10 days thereafter movant may file a reply brief or other appropriate responsive documents.

(b) Failure to file a statement required under (4)(a) may subject the motion to summary ruling. Failure to file a statement within 5 days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer statement within 10 days by an adverse party shall be deemed an admission that the motion is well taken. Reply statements by movants are optional and failure to file will not subject a motion to summary ruling. The hearing officer may grant extensions of these filing time limits.

(c) The hearing officer may order oral argument with or without request of a party.

(d) Unless oral argument is ordered, the motion is deemed submitted at the expiration of any applicable time limit without supporting briefs having been filed. If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the hearing officer orders additional briefs in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

(5) For purposes of this rule, time computation shall be governed by Rule 6(a), Montana Rules of Civil Procedure. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1985 MAR p. 943, Eff. 7/12/85; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 23 and 24 reserved

37.5.325 HEARING PROCEDURE (1) A claimant's hearing shall be conducted:

(a) by telephone conference, unless a party to the hearing requests an in-person hearing; and

(b) at a reasonable time and date.

(2) Except as otherwise provided by department rule, a claimant's hearing shall be held in the county seat of the county of the claimant's residence, unless the parties to the hearing agree to a different location. In the case of an appeal of an adverse action by a county human services or welfare office which is not the county of the claimant's residence, the hearing may be held in the county whose adverse action is being appealed at that county's option, if that county agrees to pay all the actual and necessary expenses incurred by the claimant and necessary witnesses to attend the hearing.

(3) Hearings for medical assistance providers shall be held at Helena, Montana and shall be in person except that the hearing may be conducted by telephone as mutually agreed by the parties. The department may designate the place of hearing either by notifying the office of fair hearings in writing that hearings in a particular program will generally be held in a particular place or by designating the place of hearing on a case by case basis.

(4) The hearing officer shall notify the claimant or provider or his authorized representative by certified mail at least 10 days in advance of the time and place of the hearing. The claimant or provider may waive in writing the right to 10 days notice.

(a) The notice of hearing shall include:

(i) the name, address and telephone number of the person to notify in the event that it is not possible for the claimant or provider to attend the hearing;

(ii) notification that the hearing request will be dismissed if the claimant or provider or his authorized representative fails to appear at the hearing without good cause;

(iii) with respect to claimants only, the department's hearing procedures and any other information that would contribute to claimant's understanding of the proceedings and effective presentation at the hearing;

(iv) an explanation of claimant's or provider's rights as enumerated in (5) of this rule; and

(v) notification of the claimant's right to request an in-person hearing.

(5) The claimant or provider shall have adequate opportunity:

(a) to examine the contents of his case file, except for those portions which the claimant is precluded from examining by state or federal law or regulation or directive of a medical professional, and all documents and records to be used by the department at the hearing at a reasonable time prior to the hearing as well as during the hearing. Portions of the case file, documents and records that the claimant is not allowed to examine are not admissible as evidence at the hearing;

(b) at his option, to present his case himself or with the aid of an authorized representative;

(c) to bring witnesses;

(d) to establish all pertinent facts and circumstances;

(e) to advance arguments without undue interference; and

(f) to question or refute any testimony or evidence, including opportunities to confront and cross-examine adverse witnesses.

(6) Discovery shall be available to the parties. The department hereby adopts and incorporates by reference the attorney general's model rule 13 found in ARM 1.3.217 which sets forth the procedures for discovery in contested cases. A copy of the model rule may be obtained by contacting either the Attorney General's Office, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401 or Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. (History: Sec. 2-4-201, 53-2-201, 53-2-206, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 2-4-602 and 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1981 MAR p. 1111, Eff. 10/1/81; AMD, 1984 MAR p. 1633, Eff. 11/16/84; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 26 and 27 reserved

37.5.328 PROPOSAL FOR DECISION BY HEARING OFFICER

(1) The proposal for decision shall:

(a) be based on the facts and evidence admitted in the hearing record as applied to pertinent state and federal law and regulation;

(b) consist of proposed findings of fact, proposed conclusions of law and a recommended order; and

(c) include a statement of a party's right to request an appeal or review of the decision according to law.

(2) A copy of the proposal for decision shall be mailed to all parties and, if applicable, the local department office, regional office, central office or other interested persons. (History: Sec. 53-2-201, 53-2-606, 53-4-111, 53-4-212, 53-6-111, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, 53-2-306, 53-4-112 and 53-6-111, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; AMD, 1987 MAR p. 2395, Eff. 12/25/87; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 29 and 30 reserved

37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION (1) If a party is aggrieved by an adverse proposal for decision, a request for review may be made by filing notice of appeal in accordance with this rule.

(2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:

(a) FAIM;

(b) food stamps;

(c) medicaid;

(d) developmental disabilities services;

(e) low income energy assistance program (LIEAP);

(f) low income weatherization assistance program (LIWAP);

(g) refugee assistance; and

(h) mental health services plan.

(3) The notice of appeal must be received by the office of fair hearings within 15 days of the date of mailing of the proposal for decision.

(4) The following procedures apply in a board of public assistance review of a proposal for decision:

(a) Parties may file briefs no later than 10 days before the meeting of the board for review, except that reply briefs may be filed within five days after actual receipt of an initial brief.

(i) Copies of all briefs shall be served upon all parties.

(ii) An original and four copies of each brief shall be filed with the Board of Public Assistance, P.O. Box 202953, Helena, MT 59620-2953.

(b) Oral arguments to the board are permitted at the board hearing.

(c) The board's review and decision must comply with the provisions of 2-4-621, MCA. For purposes of 2-4-621, MCA, the board shall be considered the "agency", but this rule shall not be construed to confer upon the board any authority to determine department policy.

(d) The board may not consider or make a part of the record any evidence not admitted in evidence by the hearing officer for purposes of the hearing. If the admission or consideration of additional evidence is necessary to the decision, the matter shall be remanded to the hearing officer for additional proceeding as ordered by the board.

(5) Except as otherwise provided by department rule, in all cases not specified in (2), the notice of appeal must be made to the department director in accordance with 2-4-621, MCA. The review shall be conducted and decided by the director or the director's designee.

(6) A notice of appeal of a matter appealed to the director may be made in writing to the Director, Department of Public Health and Human Services, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The request must be received by the director within 15 days of the mailing of the proposal for decision.

(7) The proposal for decision prepared by the hearing officer is the final agency decision, without further action by the board, the director or the director's designee, unless a request for review is received within 15 days of the date of mailing of the proposal for decision. The 15 day time limit may be extended if a party can show good cause but in no event shall the period of time be extended beyond 45 days.

(8) If a request is received within the specified time period, the board, the director or the director's designee shall consider the proposal for decision, the exceptions filed, briefs or oral argument presented and the record of the hearing, and shall:

(a) notify the parties and, if applicable, the local office, regional office, central office or other interested person of the decision; and

(b) notify the claimant or provider or other party of his right to judicial review. (History: Sec. 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 52-2-704, 53-2-201 and 53-2-606, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1984 MAR p. 1633, Eff. 11/16/84; AMD, 1985 MAR p. 943, Eff. 7/12/85; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00; AMD, 2002 MAR p. 1553, Eff. 5/31/02.)

Rules 32 and 33 reserved

37.5.334 JUDICIAL REVIEW (1) A party who is aggrieved by a final decision may seek judicial review of that decision by filing a petition in district court within 30 days after service of the final decision as provided in 2-4-702, MCA. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201 and 53-3-113, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; AMD, 1987 MAR p. 2395, Eff. 12/25/87; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rules 35 and 36 reserved

37.5.337 AVAILABILITY OF HEARING RECORDS (1) The proposal for decision, the verbatim transcript, if requested by a party, all exhibits, papers and requests filed in the proceeding, and, if applicable, the decision of the board or the director or the director's designee on review under ARM 37.5.331 and of a court on any subsequent judicial review shall constitute the exclusive record. The record shall be available to the claimant for inspection and copying at a place accessible to him at a reasonable time.

(2) All hearing decisions shall be available to the public for inspection and copying, except that the names and addresses and any other identifying information of claimants shall be kept confidential. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Subchapter 4 reserved

Subchapter 5

Notice Requirements for Public Assistance Programs

Rules 01 and 02 reserved

37.5.503 NOTICE UPON APPLICATION FOR PUBLIC ASSISTANCE

(1) At the time of application for benefits administered by the department, including but not limited to FAIM, food stamps, medicaid, LIEAP, LIWAP, refugee assistance and daycare benefits, a claimant shall be informed in writing of:

(a) the claimant's right to a hearing;

(b) how a hearing may be obtained;

(c) the right to representation by legal counsel, relative, friend or other spokesman;

(d) notice of the possible penalties for intentional program violations; and

(e) any other information specifically required by applicable law, including department rule. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

Rule 04 reserved

37.5.505 NOTICE UPON ADVERSE PUBLIC ASSISTANCE ACTION

(1) Upon an adverse action by the department affecting benefits administered by the department, including but not limited to FAIM, food stamps, medicaid, LIEAP, LIWAP, refugee assistance and daycare benefits, the claimant shall be provided adequate and timely notice.

(a) This rule applies only to adverse actions against claimants;

(b) Notice and hearing rights of providers are governed by 37.5.307; and

(c) This rule shall not be construed to require notice to a claimant when the department provides notice to a provider.

(2) If the adverse action proposed by the department is the suspension, reduction or termination of benefits of the claimant, notice is timely if it is mailed at least 10 days prior to the time the proposed adverse action is to become effective.

(3) Adequate notice need not be provided prior to the date of adverse action but may be mailed at the time the adverse action is taken in the following instances:

(a) the department has factual information of death of claimant or payee (and no relative is available to serve as payee) or of all members of the household if claimant is a household for purposes of the food stamp program;

(b) claimant provides a signed written statement requesting termination or reduction of benefits;

(c) when the fact that claimant has been accepted for benefits in another jurisdiction has been established, except that for purposes of the food stamp program the department need only establish that claimant has moved from the project area;

(d) when claimant was notified in writing that benefits would automatically terminate at the time that the grant for or the certification of benefits was made, including a special allowance for a specific period, benefits received to restore lost benefits, and benefits provided pending approval of benefits under another program; and

(e) in the case of benefits received under the food stamp program as follows:

(i) the claimant's allotment varies from month to month within the certification period to account for anticipated change and the claimant was so notified at the time of certification;

(ii) claimant or member of claimant household is subject to a lockout or strike and signs a waiver of notice of adverse action to allow the department to reduce or terminate benefits when the claimant or member of claimant household receives income from employment again;

(iii) a member of claimant household is disqualified for fraud, or the benefits of the claimant household are reduced or terminated to reflect the disqualification of the member as provided for in 7 CFR 273.16; and

(iv) the department initiates a mass change as described in 7 CFR 273.12(e).

(f) in the case of benefits received under all programs except the food stamp program:

(i) the claimant enters an institution and further benefits do not qualify for federal financial participation;

(ii) claimant is placed in skilled or intermediate nursing care or long-term hospitalization;

(iii) claimant's whereabouts are unknown and mail is returned with no forwarding address;

(iv) claimant is a child receiving benefits under the FAIM program and is removed from his home by judicial determination or is voluntarily placed in foster care by legal guardian;

(v) a change in claimant's medical care is prescribed by his physician; and

(vi) claimant has provided information which requires termination or reduction of assistance and has indicated in writing that he understands the consequences of providing the information.

(4) In the case of probable fraud in all programs except the food stamp program, notice of adverse action is timely if mailed at least 5 days prior to the effective date of the adverse action.

(5) Notice is adequate if it includes:

(a) a statement of the proposed adverse action;

(b) the reason for the proposed adverse action;

(c) the specific regulations supporting the proposed adverse action;

(d) a statement of the claimant's right to a hearing;

(e) how to obtain a hearing;

(f) telephone number to call for additional information;

(g) the right to be represented by legal counsel, friend, relative or other spokesman;

(h) the availability of free legal assistance if such assistance is known to the department program manager involved in the denial of the claim;

(i) if applicable, whether or not benefits are to be continued and the liability of the claimant for benefits received pending hearing if the hearing decision is adverse; and

(j) any other information as specifically required by applicable law, including department rule.

(6) A notice is effective for purposes of this rule if the notice substantially complies with the requirements of (5). A notice shall not be considered inadequate for purposes of this rule based upon good faith errors or omissions that are not prejudicial to the substantial rights of the claimant.

(7) A claimant is not entitled to advance notice of an adverse determination regarding medical necessity of services under the medicaid program. The department may review medical necessity as provided in ARM 37.85.410 and notice of any adverse action may be provided within a reasonable time after a determination, even though the services may have been provided at an earlier date. (History: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113 and 53-7-102, MCA; IMP, Sec. 53-2-201, MCA; NEW, 1979 MAR p. 489, Eff. 5/25/79; AMD, 1979 MAR p. 812, Eff. 7/27/79; TRANS & AMD, from SRS, 2000 MAR p. 1653, Eff. 6/30/00.)

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Subchapter 6

Certification of Long Term Care Facilities
Informal Dispute Resolution

37.5.601 PURPOSE (1) The purpose of ARM 37.5.601 through 37.5.615 is to supplement those provisions of the Code of Federal Regulations (CFR) which provide the requirements nursing facilities must meet in order to participate in the medicaid program, and which govern the certification of these facilities by the state survey agency for participation in the medicaid program.

(2) All nursing facilities must be certified by the state survey agency in order to participate in the medicaid program and receive reimbursement from that program. Nursing facilities must comply with the applicable provisions of 42 CFR Parts 442, 483 and 488, updated through February 2004 as well as the definitions and standards outlined in this chapter. The department adopts and incorporates by reference 42 CFR Parts 442, 483 and 488, updated through February 2004. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(3) The state survey agency shall apply the applicable provisions of 42 CFR Parts 442, 483 and 488, updated through February 2004, as well as the definitions and standards outlined in this chapter to both the survey and certification process and the informal dispute resolution process when issuing or reviewing a deficiency citation to a nursing facility. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-106, 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

37.5.602 DEFINITIONS The following definitions shall apply to nursing facilities participating in the medicaid program, and to the certification of nursing facilities for participation in the medicaid program by the state survey agency, as provided for at 42 CFR Parts 442, 483 and 488. The following definitions shall also be applicable to the informal dispute resolution process required by 42 CFR 488.331, and outlined in this subchapter. These definitions are in addition to those found in the CFR:

(1) "Actual harm" means the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program resulted in harm to a resident in one of the following ways:

(a) an identifiable and substantial impairment of cognitive or psychological functioning or emotional well being;

(b) an identifiable and substantial impairment of any bodily organ or function;

(c) permanent or temporary disfigurement; or

(d) death.

(2) "Avoidable" means capable of being prevented through the application of an ongoing process of assessment, planning, intervention, monitoring and evaluation that is consistent with currently accepted standards of practice for facilities.

(3) "Centers for medicare and medicaid services (CMS)" means the federal agency that contracts with the state survey agency to perform nursing facility surveys on its behalf.

(4) "Complaint survey" or "complaint investigation survey" means a survey of a nursing facility conducted by the state survey agency following receipt of a complaint or allegation that the nursing facility has violated a federal or state standard or condition for participation in the medicaid program. The purpose of a complaint survey is to determine compliance with federal and state standards and conditions for participation in the medicaid program.

(5) "Deficiency citation" means the state survey agency's determination of a facility's failure to meet any federal or state standard or condition for participation in the medicaid program, as recorded by the state survey agency on the form designated for this purpose by the centers for medicare and medicaid services (CMS).

(6) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(7) "Facility" or "nursing facility" means a nursing facility or a distinct part of a nursing facility that participates in the medicaid program.

(8) "Immediate jeopardy" means a situation in which immediate corrective action is necessary because the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program has caused, or is likely to cause, serious injury, harm, impairment or death to a resident.

(9) "Informal dispute resolution (IDR)" means the process required by 42 CFR 488.331 by which a facility is given an informal opportunity, at the facility's request, to dispute a deficiency citation.

(10) "Minimal harm" means the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program resulting in harm to a resident in one of the following ways:

(a) an identifiable, but less than substantial, impairment of cognitive or psychological functioning or emotional well being; or

(b) an identifiable, but less than substantial, impairment of any bodily organ or function.

(11) "Potential for more than minimal harm" means actual harm is likely to occur due to the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program.

(12) "Presiding official" means an individual appointed or hired by the department to preside over or conduct informal dispute resolution proceedings. The presiding official may not have been directly involved in the certification survey regarding which informal dispute resolution has been requested.

(13) "Resident" means an individual residing in a nursing facility.

(14) "Revisit" or "survey revisit" means a follow-up survey conducted by the state survey agency subsequent to the citation of a deficiency for the purpose of determining whether the facility now meets the requirements for participation in the medicaid program.

(15) "Scope and severity" of a deficiency refers to a determination of the state survey agency regarding:

(a) whether a cited deficiency constitutes:

(i) no actual harm with a potential for minimal harm;

(ii) no actual harm with a potential for more than minimal harm but not immediate jeopardy;

(iii) actual harm that is not immediate jeopardy; or

(iv) immediate jeopardy to resident health or safety; and

(b) whether a cited deficiency:

(i) is isolated;

(ii) constitutes a pattern; or

(iii) is widespread.

(16) "Serious" means having important or dangerous consequences, as in the phrase "a serious injury".

(17) "Standard survey" means the survey of each nursing facility conducted by the state survey agency at least every 15 months in accordance with 42 CFR Part 488, Subpart E. The purpose of a standard survey is to determine compliance with federal and state standards and conditions for participation in the medicaid program.

(18) "State survey agency" means the department of public health and human services to the extent that the department conducts medicaid surveys of facilities on behalf of and under contract with the federal CMS pursuant to 53-6-106, MCA, section 1864 of the Social Security Act (42 USC 1395aa), and 42 CFR 488.10 and 488.11.

(19) "Substandard quality of care" means any deficiency citation related to 42 CFR 483.13, resident behavior and facility practices; 43 CFR 483.15, quality of life; or 42 CFR 483.25 quality of care that constitutes:

(a) immediate jeopardy to resident health or safety;

(b) a pattern of or widespread actual harm that is not immediate jeopardy; or

(c) a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(20) "Substantial compliance" means a level of compliance with the federal or state standards or conditions for participation in the medicaid program such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(21) "Tag" means the reference number utilized by the state survey agency on the statement of deficiencies to designate a standard or condition of participation with which a facility is out of compliance. Each tag corresponds to one or more federal regulations pertaining to the standards and conditions for participation in the medicaid program.

(22) "Unavoidable" means not capable of being prevented through the application of an ongoing process of assessment, planning, intervention, monitoring and evaluation that is consistent with currently accepted standards of practice for facilities. An unavoidable decline occurs when appropriate interventions have been consistently implemented, but despite these interventions, the resident's condition has declined. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-106, 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

37.5.603 OPPORTUNITY FOR INFORMAL DISPUTE RESOLUTION

(1) A facility may request an informal dispute resolution to refute a deficiency citation made by the state survey agency.

(2) An informal dispute resolution is a different and separate form of procedure from an administrative review and/or fair hearing. A facility is not entitled to an administrative review, fair hearing or other process in addition to an informal dispute resolution unless specifically provided for by department rule or otherwise required by law.

(3) Informal dispute resolution is an informal opportunity for the facility to dispute deficiency citations. Informal dispute resolutions conducted under this chapter are subject to neither the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA, nor to statutory rules or provisions regarding civil procedure or evidence.

(4) This rule does not require that the informal dispute resolution be conducted prior to the state survey agency making a recommendation to the CMS.

(5) Nothing in this chapter shall be construed to impede, prevent or delay any enforcement action or proceedings by the CMS or the department, acting as the state medicaid agency.

(6) The determination of the presiding official who conducts the informal dispute resolution is not binding upon CMS nor does it affect any right the facility may have to pursue any available federal administrative hearings or appeals processes.

(7) Only one informal dispute resolution to dispute deficiencies cited is available for either a standard survey or a complaint investigation survey.

(8) Regardless of whether a facility has used the opportunity for informal dispute resolution at the standard or complaint investigation survey, a facility may request an additional informal dispute resolution under the following circumstances:

(a) if a deficiency cited as a result of a standard or complaint survey continues at a survey revisit (that is, the facility has failed to correct a deficiency cited as a result of the standard or complaint survey prior to the revisit), the facility may request informal dispute resolution to dispute citation of the deficiency at the survey revisit;

(b) if a new deficiency is cited as a result of a survey revisit or as the result of an informal dispute resolution, the facility may request informal dispute resolution to dispute citation of the deficiency at the survey revisit or following informal dispute resolution; or

(c) if, on the basis of new facts discovered at the survey revisit, or as the result of an informal dispute resolution, a new example of a deficiency cited as a result of a standard or complaint survey is added following the survey revisit, or following informal dispute resolution, the facility may request informal dispute resolution to dispute the new example of the deficiency citation.

(9) A second informal dispute resolution is not available if a different deficiency is cited at the survey revisit or as a result of an informal dispute resolution but the factual basis for the deficiency is the same as the factual basis for a deficiency cited in the original standard or complaint investigation.

(10) Scope and severity classification of the deficiency citation(s) shall not be the sole basis of a facility's dispute of a state survey agency deficiency citation unless the scope and severity assessment constitutes substandard quality of care or immediate jeopardy. The informal dispute resolution process may, however, result in a change in the scope and severity classification. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

Rules 04 and 05 reserved

37.5.606 INFORMAL DISPUTE RESOLUTION FACILITY REQUIREMENTS

(1) A request for informal dispute resolution must be in writing and either received by the department or postmarked within 10 calendar days of the facility's receipt of the state survey agency's written deficiency citations. The department will accept timely applications by fax.

(2) A facility's failure to submit a timely request for informal dispute resolution shall be deemed a waiver of the facility's right to request informal dispute resolution, and the department shall be entitled to deny any request for informal dispute resolution which is not either received by the department or postmarked within 10 calendar days following the facility's receipt of the state survey agency's written deficiency citations.

(3) Requests for an informal dispute resolution must be mailed or delivered to the Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 or faxed to the attention of the Office of Fair Hearings at (406) 444-3980.

(4) The written request for an informal dispute resolution must:

(a) list the specific survey deficiency citation(s) being disputed and briefly summarize the facility's objections to each survey deficiency citation;

(b) specify whether the facility desires:

(i) a record review;

(ii) a telephone conference; or

(iii) an in-person conference;

(c) provide the name, address and telephone number of the person who is coordinating the informal dispute resolution for the facility; and

(d) specify whether legal counsel will represent the facility at the informal dispute resolution, so that the department may arrange for legal representation as well. The informal dispute resolution will be cancelled and rescheduled if the facility does not notify the presiding official in its request for informal dispute resolution that it will be represented by legal counsel, but subsequently appears at the informal dispute resolution with legal counsel.

(5) Any substantiating materials the facility wishes to have considered as part of the informal dispute resolution process must be mailed to the presiding official and must be received or postmarked no later than seven calendar days prior to the time of any scheduled telephone or in-person conference, or prior to the deadline set by the presiding official for receipt of substantiating materials in the case of a record review. The facility shall clearly:

(a) identify and describe the relevance of any material submitted;

(b) label and cross reference all attachments to the disputed citation;

(c) highlight or otherwise notate relevant facts; and

(d) indicate the desired outcome for each disputed citation.

(6) The facility shall provide to the state survey agency a duplicate copy of all substantiating materials submitted to the presiding official.

(7) The facility may request in writing, at the same time the informal dispute resolution is requested, supporting documentation for a disputed deficiency citation from the state survey agency as specified in ARM 37.5.607(3).

(8) Prior to the commencement of any informal dispute resolution conducted via in-person or telephone conference, a facility representative with authority to act on the facility's behalf must present to the presiding official a signed statement listing all of the participants who will be present on the facility's behalf. This statement:

(a) must specify that the facility feels the named persons are necessary to present the facility's case;

(b) must state that the facility takes responsibility to ensure that any person appearing on the facility's behalf will comply with all applicable federal and state health information security, privacy, and confidentiality regulations; and

(c) may list as participants staff members of a professional association(s) or legal counsel who are advising or representing the facility in the informal dispute resolution.

(9) Any observer who is not representing or advising the state survey agency or the facility must leave the informal dispute resolution during any portion of the proceedings where protected health information will be disclosed.

(10) Any person who is the subject of protected health care information discussed during an informal dispute resolution shall be entitled to receive, upon written request, a list of the names of anyone that participated in the informal dispute resolution. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

37.5.607 INFORMAL DISPUTE RESOLUTION STATE SURVEY AGENCY RESPONSIBILITIES (1) The state survey agency shall not interfere with the right of a facility to request an informal dispute resolution.

(2) The state survey agency must give the facility notice of the facility's right to request informal dispute resolution at the same time that written deficiency citation(s) findings are sent. This notice must inform the facility of:

(a) the name, address and telephone number of the person the facility must contact to request informal dispute resolution;

(b) the specific information that must be contained in the facility request for informal dispute resolution, as specified in ARM 37.5.606;

(c) the name and/or the position title of the person who will conduct the informal dispute resolution, if known; and

(d) a statement that the facility must inform the presiding official of its intent to be represented by legal counsel as specified in 37.5.606(4).

(3) Upon written request of the facility, the state survey agency must mail supporting documentation used in reaching its deficiency citation(s) to the facility and the presiding official. This documentation must be received or postmarked no later than seven calendar days prior to any scheduled telephone or in person conference, or prior to the deadline set by the presiding official for receipt of substantiating materials in the case of a record review. The facility must specify each disputed deficiency for which it is requesting supporting documentation. Information will only be provided for disputed deficiencies. The state survey agency may charge the facility $.20 per page to cover the cost of retrieving, copying and mailing this information. There will not be a charge if fewer than 20 pages are produced.

(4) The state survey agency shall review and take into consideration the information submitted by the facility prior to the informal dispute resolution. The state survey agency shall notify both the facility and the presiding official prior to the informal dispute resolution conference of any changes to the deficiency citation(s) or scope and severity classification(s) it intends to make.

(5) Following informal dispute resolution, the state survey agency shall take one or more of the following actions in accordance with the written recommendation of the presiding official or the written determination of CMS:

(a) an existing deficiency citation may be amended, modified, deleted or remain unchanged;

(b) the scope and severity of an existing deficiency citation may be changed;

(c) different or additional deficiency citations may be cited; or

(d) an existing deficiency may be cited under a different tag.

(6) If a deficiency is deleted:

(a) the deficiency must be signed, dated and marked "deleted" by the state survey agency and any enforcement action(s) recommended or imposed solely because of that deficiency must be rescinded. In addition, the scope and severity classification is adjusted to reflect only the remaining findings; or

(b) the facility may request a new written deficiency citation form that does not have the deleted deficiencies printed on it. The clean form must have the remaining applicable plan of correction placed upon it and be signed by the facility's representative before it can replace the original in the facility's public file. If a clean, signed plan of correction is not provided, the original deficiency citation form with the signed plan of correction may be disclosed.

(7) If the state survey agency disagrees with the determination of the presiding official, the state survey agency may, but is not required to, include with its official recommendation to the CMS or to the state medicaid agency a written statement stating that it disagrees with the determination of the presiding official, and specifying the reason(s) why it disagrees. A copy of this statement must also be sent to the facility and the presiding official. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

Rules 08 and 09 reserved

37.5.610 INFORMAL DISPUTE RESOLUTION PROCESS (1) Upon receipt by the department of a timely written request for informal dispute resolution complying with the requirements of this chapter, the department shall designate an individual who was not directly involved in the certification survey for which informal dispute resolution was requested to serve as the presiding official.

(2) If the facility has requested an in-person or telephone conference, the presiding official will schedule the informal dispute resolution conference and provide at least 10 calendar days advance notice to the facility and state survey agency of the date, time and place or telephone conference call information set for the informal dispute resolution. Each party to the informal dispute resolution shall be given one reasonable opportunity to reschedule a telephonic or in-person informal dispute resolution conference.

(3) If the facility has requested a record review, the presiding official will set a deadline for submission of substantiating or relevant information and materials by the facility and the state survey agency.

(4) All in-person conferences will be held in Helena, Montana.

(5) All facility costs associated with the informal dispute resolution process, including, but not limited to, witness and attorney fees, shall be borne by the facility, regardless of the outcome of the informal dispute resolution.

(6) The presiding official will conduct the informal dispute resolution conference in a way that allows for an orderly presentation of facts. The presiding official may:

(a) limit testimony and/or rebuttal of information by either the facility or the state survey agency that is irrelevant, redundant or beyond the scope of the informal dispute resolution;

(b) determine whether facility and state survey agency witnesses will be allowed to ask each other questions and limit those questions in accordance with (6)(a);

(c) ask questions as deemed appropriate;

(d) request additional documentation; and

(e) permit a facility or the state survey agency to submit additional substantiating materials at the informal dispute resolution in the case of an in-person or telephone conference, or after the deadline set by the presiding official in the case of a record review, but only if the presiding officer is satisfied that, despite diligent efforts, the facility or the state survey agency was unable to comply with the time limits for submission of materials established by this chapter. All additional substantiating materials presented must meet the requirements of ARM 37.5.606, and two copies of the materials must be presented, one for the presiding official and one for the other party.

(7) The informal dispute resolution will be confined to disputes over the factual basis of the deficiency citations and the subsequent application of federal or state laws and regulations governing the survey and certification processes. The informal dispute resolution may not be used to challenge the:

(a) adequacy, accuracy or fairness of the state or federal regulations;

(b) classification of deficiencies as to scope and severity unless the state survey agency is alleging substandard quality of care or immediate jeopardy;

(c) remedies imposed as a result of the certification survey;

(d) survey team compliance with a requirement of the survey process unless this failure by the survey team has a significant impact on the relevance of the deficiency; or

(e) consistency of the survey team in citing deficiencies in previous surveys of this facility or of other facilities.

(8) After reviewing all materials and information presented by the parties, the presiding official shall determine whether:

(a) the facility has demonstrated that any disputed deficiency should not have been cited;

(b) whether any deficiency should be deleted, amended, or modified;

(c) whether the scope and severity of any deficiency should be changed;

(d) whether any deficiency should be cited under a different tag; and

(e) whether any additional deficiencies should be cited.

(9) The presiding official shall provide the state survey agency and the facility with a written opinion stating his or her recommendation.

(10) The deficiency citation form shall be amended as specified in ARM 37.5.607 based on the determination of the presiding official or the determination of CMS. If any amendments are made, the amended deficiency citation form will be sent to the facility and CMS.

(11) Determinations made by the presiding official shall be limited to the particular facts surrounding the disputed deficiency citation. No precedent will be set by the presiding official's determination, and no presiding official determination shall be binding upon the state survey agency in subsequent surveys or informal dispute resolution proceedings, nor shall any such determination be binding upon the presiding official presiding over any subsequent informal dispute resolution proceeding. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

37.5.611 INFORMAL DISPUTE RESOLUTION, CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) RESPONSIBILITIES (1) The presiding official shall make a written recommendation to CMS, the facility and the state survey agency following the informal dispute resolution.

(2) CMS shall have the final authority to make a determination in the informal dispute resolution process. CMS may accept, reject or amend the recommendation of the presiding official.

(3) If CMS notifies the state survey agency that CMS is making the final determination following informal dispute resolution, the state survey agency will not issue the deficiency citation form until CMS instructs the state to do so.

(4) The deficiency citation form shall be amended as specified in ARM 37.5.607 based on the written determination of CMS. If any amendments are made based on the CMS determination, the amended deficiency citation form will be sent by the state survey agency to CMS and the facility. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

Rules 12 through 14 reserved

37.5.615 INCORPORATION OF STANDARDS FOR MONITORING AND REFERRAL FOR MEDICATIONS AND TREATMENTS IN THE CERTIFICATION PROCESS (1) In compliance with 53-6-109, MCA, the following facility monitoring and referral standards for medications and treatments shall be used in the survey and certification process:

(a) the facility shall have a process in place to monitor all residents who receive a medication or treatment for excessive dose, duplicate therapy, excessive duration, inadequate monitoring based on current practice standards, inadequate indications or contraindications for use, adverse consequences which indicate the dose should be reduced or discontinued, or any combination of these reasons;

(b) the facility must notify the attending physician and, if appropriate, the facility medical director, the consulting pharmacist and/or other appropriate medical professionals when it identifies any of the conditions outlined in (a) and request his or her review of continuing the medication or treatment as ordered. Such notifications, and any resulting conclusions about continuing the medication or treatment or any changes in medications or treatments must be documented in the resident's medical record by the facility staff;

(c) if the process described in (a) is in place and is being fully implemented and utilized, but a violation of any federal or state standard or condition for participation in the medicaid program still exists, the state survey agency will cite the deficiency on the facility's deficiency citation form. The state survey agency will also refer the attending physician to the board of medical examiners for review of the care provided by the physician; or

(d) if the process described in (a) is not in place or is not being implemented or utilized fully and a violation of any federal or state standard or condition for participation in the medicaid program exists, the state survey agency will cite the deficiency on the facility's deficiency citation form. (History: Sec. 53-6-109 and 53-6-113, MCA; IMP, Sec. 53-6-109 and 53-6-113, MCA; NEW, 2004 MAR p. 736, Eff. 4/9/04.)

Chapters 6 and 7 reserved